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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,421	03/29/2001	Jay H. Connelly	42390P10861	9401
8791	7590	10/05/2006	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN			STERRETT, JONATHAN G	
12400 WILSHIRE BOULEVARD			ART UNIT	PAPER NUMBER
SEVENTH FLOOR				3623
LOS ANGELES, CA 90025-1030				

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/823,421	CONNELLY, JAY H.
	<b>Examiner</b>	<b>Art Unit</b>
	Jonathan G. Sterrett	3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 July 2006.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-27 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

***Summary***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 25 July 2006 has been entered.
2. This **Non-final Office Action** is responsive to applicant's amendment filed 25 July 2006. Currently **Claims 1-27** are pending.

***Response to Arguments***

3. Applicant's arguments filed on 25 July 2006 have been fully considered but they are moot in view of new grounds of rejection.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claims 6-11** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Claims 6, 8 and 10** cite the limitation of comparing the success of product attributes, as per Claim 6; comparing the success of products, per Claim 8; and comparing the success of ways of marketing the product, as per Claim 10. It is not clear what these comparisons are made in relation to. Are the attributes being compared against each other (and are the products being compared to each other?) or against some other standard? Therefore the claims are indefinite.

**Claims 7, 9 and 11** depend on Claims 6, 8 and 10 respectively, and are therefore indefinite for at least the reasons cited above for Claims 6, 8 and 10.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. **Claims 1-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis US 6,898,762 (hereinafter **Ellis**). (**Ellis** incorporates by reference Thomas US 2005/0149964, which is included in its entirety.)

Regarding **Claim 1**, **Ellis** teaches:

**receiving a request to obtain consumer feedback on a broadcast product**, column 19 line 37, the server requests from the client device feedback on what was watched by the user.

**wherein the broadcast product is designed to be broadcasted, substantially simultaneously, from a signal source to a service area via a broadcast medium, and captured by a plurality of clients located in the service area during the broadcasting**

column 1 line 52, broadcast product is distributed via a variety of means, including broadcast television facilities (i.e. substantially simultaneously, since it is being broadcast as a television medium).

column 2 line 10-12, the broadcast product is captured by a plurality of clients (i.e. television viewers) who are in the service area for that distribution facility.

**sending at least one product description data to the plurality of clients via the broadcast medium,**

column 4 line 49-54, program guide data is transmitted (i.e transmitted by the main broadcast facility) to the interactive television program guide equipment (i.e. the plurality of clients).

**wherein sending the product description data includes sending descriptions of features that characterizes the broadcast product;**

column 4 line 53-57, product description data includes channels, titles, descriptions program identifiers, that characterize the programs (i.e. product) that is being broadcast.

**receiving a feedback data on the broadcast product from each of the plurality of clients transparent to the user of the clients**

column 19 line 13-15, the program guide client tracks what users are watching (without the user knowing what is tracked) and provides this to the server on request from the server – this transmission is transparent to the user watching television.

**wherein receiving the feedback data includes that each client generates at least one rating indicating the user's interest level with respect to each of the features.**

Column 20 line 20-25, the program guide may define expressions (i.e. numerical expressions that define a rating) and provide ratings for programs users have watched. The numerical expressions calculate a rating based on the program guide features characterizing the broadcast product – see column 20 line 35-40).

**processing a consumer feedback summary based on the feedback data on the broadcast product to infer demand for an upcoming broadcast product that is scheduled for broadcasting over the broadcast medium.**

Column 20 line 42-45. the program guide view makes a recommendation on a product that is currently being broadcasted or scheduled to be broadcasted over the

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broadcast medium (in this example, the recommendation is made to view the movie "Armageddon" on another channel).

Ellis teaches inferring what a user will want to watch based on characterizing and rating what the customer has watched and based on their profile. Ellis does not teach inferring future demand for a yet to be scheduled broadcast product.

However, it is old and well known in the art to infer demand for future products based on what consumers like. Consumer preferences form an important input in designing new products so that the new products are likely to satisfy the consumer preference.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Ellis, regarding characterizing consumer demand to predict what available shows the consumer might want to watch, to include the step of inferring future demand for a yet to be scheduled product, because it would ensure that future shows met consumer preferences and improved consumer satisfaction.

Regarding **Claim 2**, Ellis teaches:

**Wherein receiving the feedback data further includes that the clients generate at least one of the following:**

**relevance data to indicate a relevance level of each of the features to the user's interest in the broadcast product; and**

column 20 line 24-27, the individual's profile is applied to the product features to determine a level of interest the user might have in the particular television program.

Ellis teaches using viewer history and the expressed profile of a user to determine what broadcast product the user is likely to prefer in the future.

Ellis does not teach using data to indicate an accuracy level of a first rating based on the user's viewing history.

However, the concept of using accuracy data to determine how accurate a prediction is based on actual data is a concept that is old and well known in the art of forecasting. This technique helps improve future predictions by providing an indication of how accurate past predictions were.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Ellis, regarding using a user viewing history and profile information to predict a user's future preferences, to include the step of receiving believability data to indicate and accuracy level of a consumer's rating of a product, because it would improve the accuracy of the future prediction.

Regarding **Claim 3**, Ellis teaches:

**wherein the request to obtain consumer feedback is received from a product provider of the broadcast product.**

Column 19 line 37, the request to obtain the feedback comes from the program guide server, which is a provider of the broadcast product (see Figure 2a, the program guide server provides the broadcast product).

Regarding Claim 4, Ellis teaches:

**wherein the request to obtain consumer feedback comprises a request to test the success of one or more products.**

Column 19 line 14-15, the feedback may track how long a viewer watched a program, e.g. if they watched it longer than a certain period of time.

Regarding Claim 5, Ellis teaches:

**wherein the consumer feedback summary comprises a product success data for each of the one or more products.**

Column 19 line 14-15, the tracking of how long a user watches a show measures the success of that show. This is done for all shows a viewer watches (i.e. one or more broadcast products).

Regarding Claim 6, Ellis teaches:

**wherein the request to obtain consumer feedback comprises a request to compare the success of two or more attributes of a product**

column 18 line 55-60, the server processes the logical expressions that determine how well different attributes of a broadcast product meet the expressed criteria for a user.

Regarding **Claim 7**, Ellis teaches:

**wherein the consumer feedback summary comprises an attribute success comparison data.**

column 18 line 55-60, the server processes the data to determine which shows meet the criteria as set out by the logical expressions of the user. The listing of shows comprise success comparison data since they are shows that have passed the user's criteria.

Regarding **Claim 8**, Ellis teaches:

**wherein the request to obtain consumer feedback comprises a request to compare the success of two or more products.**

Column 19 line 14-15, the feedback tracks how long a viewer watched different program, i.e. by comparing the watching time with a certain duration.

Regarding **Claim 9**, Ellis teaches:

**wherein the consumer feedback summary comprises a product success comparison data.**

Column 19 line 14-15, the feedback tracks how long a viewer watched different program, i.e. by comparing the watching time with a certain duration. The tracking data compares the success of the products with exceeding a certain viewing time.

Regarding Claim 10, Ellis teaches:

**wherein the request to obtain consumer feedback comprises a request to compare the success of two or more ways of marketing a product.**

Column 19 line 39-41, advertisement usage is tracked to determine which advertisements have been selected and which have not been selected. (see column 19 line 44 for reference to 2005/0149964, incorporated by reference into Ellis). Para 47 and 49 in Thomas discuss how advertisements are tracked to determine which advertisements (i.e. a comparison) result in purchases by consumers –see para 55.

Regarding Claim 11, Ellis teaches:

**wherein the consumer feedback summary comprises a marketing success comparison data.**

Thomas Para 62, the advertisement data includes comparison data to determine the effectiveness of advertisements, e.g. based on the location of the advertisement in the program guide.

Regarding **Claim 12**, Ellis teaches:

**wherein the product description data comprises meta-data**

column 15 line 25, program guide data (e.g. what kind of show it is, MPAA rating) is meta data, because it is data about the program, i.e. data describing another set of data.

Regarding **Claim 13**, Ellis teaches:

**the product description data comprises program guide information**

column 15 line 25, the product description data is program guide data (e.g. what kind of show it is, MPAA rating) .

**Claims 14-27** recite similar limitations as those recited in **Claims 1-12** above, and are therefore rejected under the same rationale.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 4646145 A by Percy discloses a television viewer reaction determination system.

US 4695879 A by Weinblatt discloses a television view meter.

US 5920642 A by Merjanian discloses an interactive device for receiving feedback from a user.

US 20020104087 A by Schaeffer discloses a method and apparatus for updating the profile of a user.

US 6898762 B2 by Ellis discloses a client-server program guide.

US 6990635 B2 by Kurapati discloses an interface for collecting viewer ratings of media.

US 7065709 B2 by Ellis discloses a client-server program guide.

US 7107271 B2 by Aoki discloses an agent interface device.

US 6704929 B1 by Ozer discloses tracking viewer behaviour of a home entertainment system

US 5842199 by Miller discloses a system to evaluate predictive utility.

US 5550928 by Lu discloses an audience measurement system.

Steve Morgenstern, "Digital Etc. the end of TV as we know it", Aug 5, 1999, Rolling Stone. New York:., Iss. 818; pg. 73, 2 pgs.

Anonymous, "Set-top box offer new possibilities for broadcasters", Jun 1999 Broadcast Engineering. Overland Park: Vol.41, Iss. 7; pg. 22, 2 pgs.

ERNEST HOLSENDOLPH\ COX NEWS SERVICE, "THE TV THAT WORKS LIKE A GENIE IN A BOX A COMPUTER CALLED TIVO ACTS LIKE A BRAINY VCR,

EVEN FETCHING PROGRAMS IT THINKS YOU MIGHT LIKE TO WATCH".; Sep 3, 1999, [ALL Edition], Greensboro News Record. Greensboro, N.C.: pg. D.1.

HOWARD WOLINSKY, "Hard drive toward personalized TV // New computer devices search logs, then record"; Jan 19, 1999 [5XS Edition], Chicago Sun - Times. Chicago, Ill.: pg. 42.

Andy Fry, "Channelling digital choice", Sep 24, 1998

. Marketing. London: pg. 27, 2 pgs.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is (571) 272-6881. The examiner can normally be reached on Monday-Friday, 8:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS  
9-26-06

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Art Unit 3623